

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5801

PETITION OF MARK D. CHENG
(Hearing held September 18, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, October 18, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes to construct a two-story addition that requires a 13.16 foot variance as it is within 16.75 feet of the established front building line. The required setback is 29.91 feet.

Kevin Whitcomb and Bob Arthur, builders, appeared with the petitioner at the public hearing.

The subject property is Lot 1, Block 16, Westmoreland Hills Subdivision, located at 5302 Carvel Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00546661).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a two-story addition in the eastern side yard. The petitioner testified that the property is located at the intersection of Carvel Street and Blackistone Road and that Carvel Street is a dead-end street.
2. The petitioner testified that the property is polygon shaped with the residence sited at an angle on the lot. The petitioner testified that the property's front yard wraps around that lot, resulting in a very small rear yard and a single side yard. The petitioner testified that the proposed construction would square off the residence and provide for an additional bedroom and bathroom.
3. The petitioner testified that addition could not be added to the rear of the property because the area in the rear yard is not level and that this area is the only usable open space of the property.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) and (b) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the combination of the lot's shape and size, while distinctive, is similar to other properties in the immediate neighborhood. See, Exhibit No. 8 (zoning vicinity map). The Board further finds that the property has no exceptional topographical or other conditions peculiar to the property. The existing conditions of the property do not create a zoning reason for the grant of a variance.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the requested variance would extend the petitioner's residence beyond the street line of the existing houses on Carvel Street and that the variance is not minimum reasonably necessary. See, Exhibit No. 4.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance of 13.16 feet from the required 29.91 foot established front building line for the construction of a two-story addition is denied.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Allison Ishihara Fultz, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 18th day of October, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.